

In the 1963 Minnesota contested election case of Odegard v Olson (§60, *infra*), the contestee moved to dismiss, claiming that the 40-day period for gathering evidence by contestant had expired and that no evidence had been obtained and forwarded to the Clerk as provided under 2 USC: §§203, 223, and that therefore no contest existed. The elections committee found that the contestant "had abandoned the statutory procedure which established a specific time within which to develop evidence. . . ." By majority vote, the committee concluded that the contestee's contention should be sustained on the grounds that the contestant "failed to comply with the statutes in that he did not take testimony as provided by law and that the time limit for taking such testimony has now expired."

Motion to Dismiss as Premature

§ 25.6 Contestee's motion to dismiss will be denied as premature although made at a time when there is no evidence actually before the election committee, where it appears that testimony adduced under the election contest statute has not yet been printed or transmitted

by the Clerk to the committee.

In the 1959 Kansas contested election case of Mahoney v Smith (§58.2, *infra*), the Committee on House Administration concurred in the election subcommittee's denial of contestee's motion to dismiss the contest "for the reason that it was impossible at that early date to evaluate the merits of the case or rule on the testimony." There was no evidence before the committee because the testimony adduced under the contest statute had not yet been printed or transmitted by the Clerk to the committee.

§ 26. Motion for More Definite Statement

A motion for more definite statement is permitted under the Federal Contested Elections Act. It provides that if a notice of contest to which an answer is required is so vague or ambiguous that the contestee cannot reasonably be required to frame a responsive answer, he may move for a more definite statement before interposing his answer. The motion must point out the defects complained of and the details desired. If the motion, which is heard by the Committee on House

Administration, is granted, and the order of the committee is not obeyed by contestant within the

time required, the committee may dismiss the action or make such other order as it deems just.⁽¹¹⁾

H. TAKING OF TESTIMONY; DEPOSITIONS

§ 27. Generally; Time

Under the Federal Contested Elections Act, either party may take the testimony by deposition of any person, including the opposing party, either for discovery purposes or for use as evidence in the case or for both purposes.⁽¹²⁾

Contestant may take testimony within 30 days after service of the answer, or, if no answer is served, within 30 days after the time for answer has expired. Contestee may take testimony within 30 days after contestant's time for taking testimony has expired. Ten days is permitted for the taking of rebuttal testimony.⁽¹³⁾

The testimony must be taken before an officer authorized by law to administer oaths.⁽¹⁴⁾

A party desiring to take a deposition must serve written notice

on the opposing party not later than two days before the examination, unless the parties stipulate in writing to the contrary.⁽¹⁵⁾

Where a witness who has been subpoenaed under the Federal Contested Elections Act willfully makes default, or refuses to answer a pertinent question, he is subject to both fine and imprisonment.⁽¹⁶⁾

Except for the time for serving and filing a notice of contest, the Committee on House Administration, for good cause shown, may at any time in its discretion order a period enlarged if request therefor is made before the expiration of the period originally prescribed or ordered; or, on motion made after the expiration of the specified period, it may permit the act to be done where the failure to act was the result of excusable neglect.⁽¹⁷⁾

11. 2 USC § 383(c).

12. 2 USC § 386(a).

13. 2 USC § 368(c).

14. 2 USC § 386(d).

As for pay of witnesses subpoenaed to appear before the House or any of its committees, see Rule XXXV, *House Rules and Manual* § 931 (1973).

15. 2 USC § 387 (a), (b).

16. 2 USC § 390, authorizing a fine of not more than \$1,000 or imprisonment of not more than 12 months, or both.

17. 17. 2 USC § 394(c).